

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claim CA MC 115739 null and void in part.

Affirmed.

1. Act of November 9, 1921--Mining Claims: Lands Subject to--Rights-of-Way: Federal Highway Act

That portion of a mining claim located on land subject to a pre-existing highway right-of-way granted to the State of California pursuant to the Federal Highway Act of November 9, 1921, 42 Stat. 212, now the Federal Aid Highway Act, 23 U.S.C. § 317 (1988), is null and void ab initio.

2. Mining Claims: Placer Claims

Pursuant to 30 U.S.C. § 36 (1988) and 43 CFR 3842.1-3, placer mining claim locations may not contain noncontiguous tracts of land.

APPEARANCES: Jesse R. Collins, Barstow, California, and Robert J. Collins, Hesperia, California, pro sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Jesse R. Collins, Robert J. Collins, and others 1/ have appealed from a June 12, 1991, decision of the California State Office, Bureau of Land Management (BLM), declaring the Opalime #1 placer mining claim, CA MC 115379, null and void in part to the extent it includes right-of-way LA 0143954. BLM also advised that, accordingly, the claim consists of two non-contiguous parcels, which is prohibited by 43 CFR 3842.1-3. BLM stated that unless an amended location or a relinquishment/abandonment of one of the parcels were

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1/ While the notice of appeal is signed by Jesse R. Collins and Robert J. Collins, others named as parties to the appeal include Clifford E. Arnhart, Shirley A. Arnhart, Karan M. Case, and Deborah J. Collins of Hesperia, California, and Linda J. Collins (Callahan) of Barstow, California. The above seven, along with Mildred E. Collins, comprise the eight individuals who originally located the claim.

filed within 30 days of receipt of the decision, "a decision will be issued rejecting the recordation of the subject mining claim" (Decision at 2).

The claim in question was located on September 2, 1982, by an association of eight locators, and a copy of the location notice was filed with BLM on September 29, 1982. The 160-acre claim is described as the NW $\frac{1}{4}$ , sec. 15, T. 9 N., R. 2 W., San Bernardino Meridian, San Bernardino County, California. BLM, in its decision, stated that right-of-way LA 0143954 is a grant to the State of California to include "all land within 200 feet of the centerline of the grant." The supplementary master title plat for sec. 15, T. 9 N., R. 2 W., San Bernardino, shows the right-of-way crossing the southern and eastern boundaries of the SE $\frac{1}{4}$  NW $\frac{1}{4}$  sec. 15 so as to isolate from the remainder of the NW $\frac{1}{4}$  a small triangular-shaped parcel of land of approximately 10 acres in the southeast corner of the SE $\frac{1}{4}$  NW $\frac{1}{4}$ .

In their statement of reasons, appellants do not contest the Government's authority to grant rights-of-way, but they disagree with the conclusion that a right-of-way will divide a claim into noncontiguous parcels.

In support of this argument, appellants provide various excerpts from what they represent to be a 1943 edition of American Law of Mining. In conclusion, appellants argue that

[T]he law supports our position \* \* \* allowing us to continue with the claim as filed in 1982, but excluding the 12 acre right-of-way. It also seems that the law leans toward the interpretation that, even though the right-of-way exists, it does not upset the contiguity of the small SE corner from the claim 1/4 section dimension.

(Statement of Reasons at 2).

[1] In William Peterson, 113 IBLA 19, 20 (1990), the Board ruled that those portions of mining claims located on land subject to a pre-existing highway right-of-way granted to the State of California pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1988), are null and void ab initio to the extent they include those lands within the highway right-of-way.

Right-of-way LA 0143954 was approved on March 19, 1957, under the authority of the Federal Highway Act of November 9, 1921, 42 Stat. 212. Section 17 of that act provided for the appropriation and transfer of public lands and materials necessary for highway rights-of-way to the "State highway department." 42 Stat. 216. In 1958, Congress repealed the Act of November 9, 1921, but reenacted section 17, as part of the Federal Aid Highway Act of August 27, 1958, 23 U.S.C. § 317 (1988), with only a few minor changes in language not relevant herein. 2/

2/ The Federal Aid Highway Act of Aug. 27, 1958, was not intended to change any of the fundamental and underlying concepts of existing legislation such as the Act of Nov. 9, 1921, but was designed to consolidate the 40 or so separate laws on the subject. See 1958 U.S. Code Cong. and Admin. News 3942.

Although there is no provision for the issuance of patent to the State for highways across unimproved and unreserved lands, the approval of a map depicting the lands desired is intended to be the equivalent thereof. Allison v. Arizona, 420 P.2d 289, 294 (Ariz. 1966), citing Great Northern Ry. v. Steinke, 261 U.S. 119 (1923). Thus, the land underlying right-of-way LA 0143954, identified and approved in 1957, was no longer unreserved and available to mineral entry at the time of appellants' location. BLM properly declared their mining claim null and void to the extent it includes the unavailable lands of this right-of-way. See, e.g., Russell Avery, 99 IBLA 22 (1987); Ralph Memmott, 61 IBLA 116 (1982); Sam D. Rawson, 61 I.D. 255 (1953).

[2] It is clear that a single notice of location cannot apply to noncontiguous parcels of land. William Peterson, 113 IBLA at 20; W. G. Singleton, 75 IBLA 168, 170 (1983); Braitton Contractors, Inc., 37 IBLA 233, 241 (1978); 30 U.S.C. § 36 (1988); 43 CFR 3842.1-3. Since the lands in question are separated by the highway right-of-way, they may not be included in a single location. There is no basis for appellants' contention that the two parcels here should be considered contiguous.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge